

LEON F. SCULLY, JR.  
PAUL D. BEAIRD

IBLA 83-494

Decided February 22, 1984

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers, NM-A 35382 TX and NM-A 35383 TX.

Reversed.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases:  
Description of Land

Where 43 CFR 3101.2-3(b)(3) (1982) allowed the use of the acquisition tract number assigned by the acquiring agency to identify land sought to be leased, an acquired lands oil and gas lease offer using numbers assigned by the acquiring agency and accompanied by a map on which the location of individual tracts within the administrative unit is clearly marked and labeled is acceptable.

APPEARANCES: Leon F. Scully, Jr., pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Leon F. Scully, Jr., and Paul D. Beaird have appealed the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 23, 1983, rejecting noncompetitive oil and gas lease offers, NM-A 35382 TX and NM-A 35383 TX, for failure to comply with 43 CFR 3101.2-3(b) (1982) 1/ concerning lease offer requirements for describing lands not surveyed under the rectangular survey system.

The lands at issue are in Kleberg County, Texas. They were acquired by the United States for use as a naval air field (Kingsville Naval Air Station) through a condemnation proceeding concluded in 1942. United States

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1/ The oil and gas leasing regulations were wholly revised in 1983. The pertinent regulation now appears at 43 CFR 3111.2-2 (48 FR 33677 (July 22, 1983)).

v. 2,850 Acres of Land More or Less, in Kleberg County, Texas, Civ. No. 210 (S.D. Texas 1942). 2/

Appellants filed their lease offers on November 8, 1978. Lease offer NM-A 35382 TX identified the lands requested in paragraph 2 of the lease offer form as "Parcel 1 (832.50 acres). See map attached," in Kleberg County, Texas. Lease offer NM-A 35383 TX at paragraph 2, identified lands totaling 2,017.50 acres in Kleberg County, Texas, as follows:

|                         |                          |
|-------------------------|--------------------------|
| Parcel 2 (122.60 acres) | Parcel 10 ( 40.00 acres) |
| Parcel 3 (160.00 acres) | Parcel 11 ( 80.00 acres) |
| Parcel 4 (160.00 acres) | Parcel 12 (120.00 acres) |
| Parcel 5 ( 77.10 acres) | Parcel 13 ( 89.20 acres) |
| Parcel 6 (464.70 acres) | Parcel 14 ( 40.00 acres) |
| Parcel 7 (398.50 acres) | Parcel 15 ( 40.00 acres) |
| Parcel 8 ( 80.10 acres) | Parcel 16 ( 80.10 acres) |
| Parcel 9 ( 40.00 acres) | Parcel 17 ( 25.20 acres) |

This offer also referred to an "attached map." Included with each offer was a two-page document labeled "Schedule A"; an outline map labeled "Kingsville Naval Air Station, Kleberg County Texas"; and a second map that appears to be the map on which the outline map was based. 3/ Schedule A is a document attached to and "made a part of" the Declaration of Taking filed in the 1942 condemnation action (Declaration of Taking at 2). It lists "names and addresses of the persons having title to or other interest in the lands described in the within Declaration of Taking, and the amounts estimated to be fair compensation for each respective ownership"; for example:

| Name and Address | Parcel       | Acres | Estimated Fair |                    |
|------------------|--------------|-------|----------------|--------------------|
| No.              | Compensation |       |                |                    |
| Herbert Andrews, | 1            | 832.5 | \$ 42,640.00   | Kingsville, Texas. |

The maps show an outline of each parcel within an outline of the boundaries of the air station. Each parcel is identified by parcel number, acreage, and the name of the person from whom it was acquired.

In its decision, BLM quoted 43 CFR 3101.2-3(b)(1) (1982) which states:  
 (b)(1) Lands not surveyed under the rectangular survey system. If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within

2/ Title vested to the United States upon filing of the declaration and deposit of just compensation with the court. Act of Feb. 26, 1931, 46 Stat. 1421.

3/ See discussion, infra. There are seven copies of this map date stamped Nov. 8, 1978, in each lease file and we presume they were submitted with the lease offers even though they are not actually attached to the offers in the files. The labels on this map are to some degree illegible.

the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances. [ 4]

BLM concluded that

the parcel numbers used [on schedule A and the map] do not identify the area applied for by courses and distances, nor are they considered to be acquisition tract numbers. Schedule "A" is not considered to be the document by which the United States acquired title to the land, though it may have been an attachment thereto.

Therefore, these offers are rejected \* \* \* for noncompliance with 43 CFR 3101.2-3(b)(1), (2) and (3).

The reference to acquisition tract numbers relates to 43 CFR 3101.2-3(b)(3) which reads: "(3) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by paragraph (b)(2) of this section." Paragraph (b)(2) reads in relevant part: "(2) Each offer or application must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part \* \* \*."

In their statement of reasons, appellants recognize that they must comply with 43 CFR 3101.2-3(b) (1982) but argue that they did so by meeting the requirements of 43 CFR 3101.2-3(b)(2) and (3) (1982). They assert, contrary to BLM, that the parcel numbers, listed on schedule A and shown on the map, are acquisition tract numbers assigned by the Department of the Navy at the time the land was acquired. They have submitted a certified copy of the Declaration of Taking signed by the Acting Secretary of the Navy on September 12, 1942, and filed in the condemnation proceeding. The Declaration of Taking states that:

[T]he lands selected for acquisition aggregate two thousand eight hundred and fifty (2,850) acres of land, more or less, in Kleberg

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4/ In the revised regulation, 43 CFR 3111.2-2(b), the last sentence has been deleted. See 48 FR 33677 (July 22, 1983).

County, Texas, which lands are shown on a photostatic copy of map entitled "U.S. Naval Air Station, Corpus Christi, Texas, Key Plan Topographic Map Base Field P-4 near Kingsville, Texas," attached hereto as Exhibit "B" and made a part hereof.

(Declaration of Taking at 1-2). Appellants point out that Schedule A was also attached and made a part of the Declaration of Taking as we have noted. In prior offers for the same lands filed in 1977, appellants included a photocopy of a copy made by the General Services Administration (GSA) of the map attached to the Declaration of Taking (Exh. B). Appellants state in the present appeal that "[w]hile the GSA copy was legible the Xerox copies were apparently not and the New Mexico State Office rejected these offers January 20, 1978 on the grounds that the map was illegible" (Statement of Reasons at 2). Accordingly, appellants state that they "had a draftsman trace on a sepia the GSA copy of the map and reproduced copies from it which are the maps used in the offers herein." Id.

[1] In Arthur E. Meinhart, 5 IBLA 345 (1972), the Board held that where an oil and gas lease offeror seeks to avail himself of a regulation which permits him to describe lands by "acquisition tract number" and where that term has not been defined, he will not be held to have lost his statutory preference right for failure to comply with the regulation if the numbers given may reasonably be regarded as "acquisition tract numbers" and the description thereby afforded is accurate for the purpose.

The Board said

[t]he regulation relied upon by appellants merely states, "If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired \* \* \*", etc. Here the "acquiring agency" had "assigned" numbers "to the identical tracts desired" by the appellants. Those numbers were used by the acquiring agency to designate various tracts of acquired lands, \* \* \*. For oil and gas leasing purposes it makes absolutely no difference whether the acquiring agency assigned the numbers to the tracts of acquired lands for the purpose of facilitating the acquisition process or for some other administrative purpose.

In the absence of any precise definition of the term it was natural for appellants to assume that the numbers assigned by the acquiring agency to the identical tracts that they desired to lease were precisely what was contemplated and permitted by the regulation, particularly in view of the fact that they were perfectly mapped and the numbers, when used in conjunction with the map, afforded very precise description of the lands included in the offers. [Emphasis in original.]

5 IBLA at 348-49. In the Meinhart case the Farm Security Administration had purchased 10,000 acres as a unit. Subsequently, it had subdivided the unit into more than 100 parcels to which it assigned consecutive numbers and had mapped the subdivided area to show parcels according to their assigned numbers. In the case now before us, the Department of the Navy assigned

numbers to each parcel which made up the whole area of land it was condemning in the process of or at the time of the taking. They correspond to the parcels as labeled on the map attached to the Declaration of Taking. We conclude that these parcel numbers are what is contemplated by the regulation to be acquisition tract numbers.

What does distinguish the Meinhart case from this one, however, is the quality of the map. The map submitted by Meinhart depicted each tract desired by the offerors by its designated number as in this case. However, it also incorporated a metes and bounds description of each tract, giving courses and distances between the successive angle points and tied to section lines and corners of the public land survey. Thus the tract number plus the map afforded a very precise description of the land sought. We find that this is more than 43 CFR 3101.2-3(b)(2) (1982) required. Under that regulation, the desired lands must be "clearly marked showing their location with respect to the administrative unit or project of which they are a part." We have held that where an offer lists acquisition tract numbers assigned by the acquiring agency and it is accompanied by a plat prepared by the acquiring agency to show the location of each tract, the offeror has complied with 43 CFR 3101.2-3(b) (1982). Moran Exploration, Inc., 63 IBLA 392 (1982). On the other hand, where the identifying number on the map has been obscured, we have ruled that the offeror has not met the requirements of the regulation. Vester Songer, 69 IBLA 177 (1982).

The outline map submitted by appellants, as they admitted, was not prepared by the acquiring agency; it was based on a copy of such a map. The outer boundary of the air station on appellants' map conforms to that on the map which is exhibit B to the Declaration of Taking. The boundaries of the individual parcels are clearly shown and conform to those on that map as well. As we indicated in both Moran Exploration, Inc., *supra* at 393, and Vester Songer, *supra* at 178, a map is adequate where it clearly shows the boundaries of each tract requested and within those boundaries is displayed the identifying acquisition number. Appellants' map does just that. It is an accurate depiction of the administrative unit and the individual parcels are clearly marked.

Although BLM might prefer a more precise description or map, the regulations do not require one in this instance. Having met the requirements of 43 CFR 3101.2-3(b)(3) (1982), there is no need for appellants to comply with 43 CFR 3101.2-3(b)(1) (1982). 5/

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5/ In Bruce Anderson, 77 IBLA 376 (1983), we examined a lease offer, NM-A 49053 TX, junior to appellants' offer. That offer requested "[a]ll of the Kingsville Naval Air Station" which was further described by number designation with metes and bounds descriptions and maps depicting the area sought. The area included a parcel identified as "Civil 210," referring to the land originally acquired for the air station and 5 other later acquired parcels. The maps were real estate summary maps of the air station. This offer had also been rejected for lack of compliance with 43 CFR 3101.2-3(b) (1982), but the Board found the numbers used to be acquisition tract numbers and the maps in compliance with 43 CFR 3101.2-3 (b)(2) (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is reversed.

Wm. Philip Horton  
Chief Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge A  
Alternate Member

Gail M. Frazier  
Administrative Judge.

